

STATE OF COLORADO

EXECUTIVE DIRECTOR'S OFFICE

Department of Local Affairs
1313 Sherman Street, Suite 500
Denver, CO 80203
Phone: (303) 866-4904
FAX: (303) 866-4317
TDD: (303) 866-5300



Bill Ritter, Jr.
Governor

Susan E. Kirkpatrick
Executive Director

TO: Severance Tax Credit Study Group
FROM: Susan Kirkpatrick
DATE: December 2, 2008
SUBJECT: Proposed Severance Tax Credit Modernization Bill Recommendation and Local Government Severance Tax Fund Loan Authority Proposal.

From our previous five meetings and discussions two initiatives have arisen to the level where we should consider them for bill proposals in the next legislative session.

- The modernization of the severance tax credit statute, and
- Expansion of the local project severance loan authority.

This document is divided into three sections.

1. Discussion on the proposed severance tax credit modernization bill.
2. Suggested edits to the current statute.
3. A combined bill is presented to provide a view of what the proposed statute edits will look like in completed statutory form.
4. A background and discussion is provided for the expansion of the local project severance loan authority.

Please review these for our next meeting where we need to decide what the final report will contain when we deliver it to the legislature in late January.

Section I: Proposed Severance Tax Credit Modernization Bill Discussion

Purpose of the Statute

The purpose of the severance tax credit statute is to encourage taxpayers to make contributions to local governments prior to a mineral extraction project development or expansion. It encourages risk assumption by the mineral project developers for some of the costs that local governments incur in anticipation of a new or expanding mineral development project. This is done by allowing contributions to local government infrastructure projects to be claimed as a credit against future severance tax liability.

Below are a series of changes to modernize and clarify the credit statute in order to promote its use by industry and local governments.

Problems with the Current Statute

A number of components in the existing statute are unclear or obsolete, perhaps explaining why the statute has not been used for a long period of time. To encourage use of this statute for risk assumption by the taxpayers, we should clarify and simplify a number of provisions:

1. Confusing language on timing and amounts of new and increased production prevents use of the credit.
2. Conflicting language on the unit of local government specification is confusing.
3. The Department of Revenue is currently not a formal party to the review of a contribution agreement, and should be.
4. No provision is made for verification of contribution amounts and values after the fact.
5. Extra definition of mineral production is not necessary.
6. Description of contribution-for credit agreements is disorganized in statute which seems to increase confusion and lack of use of the tax credit.
7. Lack of sufficient clarity on who in the oil and gas industry can claim the credit makes it difficult to use.
8. Exercise of the tax credit puts the Department of Natural Resources at some risk.

The following pages discuss each item followed by specific statutory edit language.

PROPOSED STATUTORY CHANGE #1:

Better Specification of New and Increased Amounts and Timing.

- a. The language in the statute regarding the starting of the severance period and the portion of the taxpayer's total liability is unclear. For an operation that is just beginning, it is understood that the contribution must occur "prior to first severance of such minerals". The amount of the contribution is currently one half of the total severance liability from the new operation over 10 years.
- b. With exploratory and evaluation production ("severance") likely in the early phase of a project, it is not clear anyone would qualify under this standard. The liability should be above some baseline of severance tax liability against which the credit can be claimed. For example, the five previous years of actual severance tax payments by the producer.
- c. The "increased severance" operation section of the statute, under which most credit proposals would be made, only requires that the contributions be made "to assist in solving the impact problems" caused by the expanded operation. The statute does not specify a specific time for the contribution relative to the increased production.

d. In addition, the statute defines “increased production” as that “for which increased severance occurs subsequent to June 30, 1980”. This would cover just about every producer in the state.

e. The action being measured for “new” and “increased” is described as “severance”. This is taken to mean physical extraction of severance taxable minerals. It is sometimes confused with sale of such minerals, or a change in value of production severance tax base due to product price increases, or changes in net severance tax liability. Differentiating the many factors that can lead to an increase in severance tax liability, particularly between price changes, production quantity or quality changes is not easily done.

Solution:

1. Combine the two current definitions, “new operation” and “expanded operation”, into one where the base period is defined as the average severance tax net payments of the taxpayer in the five corporate tax years prior to the date of the approved contribution agreement.
2. The 10-year estimation period and severance liability against which the credit can be claimed should start with the tax year following the date of the application for credit. The taxpayer’s estimate of their expanded severance tax liability should also become a formal part of the credit agreement for review by the Department of Local Affairs and the Department of Revenue. This estimate would not impact the eventual right to claim credit by the taxpayer.
3. The severance tax credit should only be applied against severance liability in excess of the 5 year average baseline amount. Stakeholders have said to not give away the existing severance tax base.

PROPOSED STATUTORY CHANGE #2:

Provide a more Specific Definition of the Local Government Partner authorized to enter into a Credit Agreement

a. The “unit of local government” phrase is paired many times in the statute with “or local units of government locally impacted”. This later phrase is specifically defined in statute as “units of local government in the geographic area wherein reside employees of the operation . . . determined on the basis of residence as reported in accordance with section 39-29-110(21)(d)”.

These restrictions were plainly intended to confine contributions to an area on the basis of data rather than supporter’s assertions or agency discretion. The use of the statutory employee residence reports is somewhat illogical, since the contribution credit agreement must be made prior to severance by an operation. Therefore there will not be any employee residents to qualify a geographical area under the definition.

b. The statute specifies that “each contribution shall be based on an agreement between or on behalf of the taxpayer and a unit of local government or local unit of government locally impacted.” The phrase “on behalf of” may only apply to the taxpayer, indicating that a contribution could be made by an agreement signed with a third party not the taxpayer. It could also apply to the “local government” indicating that one local government can enter into a credit agreement for other local governments.

While the opportunity for multiple taxpayer and/or multiple local government agreements appears beneficial in theory, the practicalities of such a contract are more than can be specified in

this statute. Multi-party severance tax credit programs can be orchestrated as a package of two party credit agreements. This was done in Delta County in the 1980's.

This attempt to tie the local government to the operations through statutory definitions and data requirements misses the fundamental point of impacts: they are *speculative, dynamic and subjective*. It also misses the critical point of the state and local government response to impacts: *cooperative public facility* and *service development*. The review of the proposed credit agreement by the Department of Local Affairs and the Energy Impact Assistance Advisory Committee is the place to put the decision as to which local governments are being impacted and which would best serve to mitigate the impacts.

Solution:

- The restrictive definition of impacted local governments on the basis of the employee residence reports should be repealed.
- The term “on behalf of” should be deleted.

PROPOSED STATUTORY CHANGE #3:

Make the Department of Revenue a formal party to review.

The Department of Revenue is currently not a formal party to the review of a contribution agreement, and should be since the agreement contains a number of pieces of information that DOR will need in the evaluation and approval of a credit claim by a severance tax payer.

Solution:

- The Department of Revenue should participate in the development phase of these credit agreements and also made a *formal* party to the advisory review *along* with the Energy Impact Assistance Advisory Committee.

PROPOSED STATUTORY CHANGE #4:

Establish post contribution evaluation and verification.

There is currently no provision in statute for evaluation and verification of the contributions specified in the approved credit contribution agreement.

Solution:

- This should be added as a requirement for taxpayer and local government record keeping and an invitation to audit by the Department of Revenue.

PROPOSED STATUTORY CHANGE #5:

Remove the confusing and redundant added definition of minerals.

Discussion:

“(4) For the purposes of this section, minerals or mineral fuels shall include, but not be limited to, oil shale, crude oil, natural gas, and oil and gas.” This section is redundant, confusing and

unnecessary for implementation of this statute. The core definition is severance tax liability, which is contained in the body of the severance tax statutes.

Solution: Repeal this section of the statute.

**PROPOSED STATUTORY CHANGE #6:
Clarify the components of the contribution agreement.**

Discussion:

The various components of the contribution agreement: the parties, the amounts, the amount limits, the required stipulations, are spread throughout the statute. These should be better organized into a list so that the parties can be clear on the required elements of an agreement.

Solution

- Break up long statutory sections with contribution definitions, add-ons and limits into a sub section list. Relocate some components to this list.

**PROPOSED STATUTORY CHANGE #7:
Improve the definition of operation.**

a. The credit allowed in statute is issued against severance taxes imposed on an “operation” with new or increased production. This definition is used to set the timing of events and to set a baseline for increased severance liabilities against which the credit can be claimed. However, the process for claiming a tax credit is not clearly defined, making it difficult for operators to navigate their way in proceeding to use the credit.

b. Severance taxes are imposed on “taxpayers” who may have many “operations”. Therefore, this credit statute implies that a separate calculation of the operation severance tax liability is required by the taxpayer, and verified by the Department of Revenue. With oil and gas, the aggregation of a range of severance tax deductions and credits over multiple “operations” may make such a distinction quite difficult.

c. The credit statute calls for the taxpayer to “anticipate” the total new or increased severance liability in the “first ten years of severance from an. . .operation” in order to set the maximum amount of credits allowed. But, C.R.S. 39-29-108(3) requires the Department of Revenue to divert all of the taxpayer’s future severance tax payments to the trust fund until the 50% of payments that were denied to the trust fund by the claiming of the credit have been made up. This refunding provision contains no separation of the severance tax payments by “operation”, implying that all the taxpayers’ severance liability is in play.

d. The end of the statute mentions that “a taxpayer shall be entitled to credit against its severance liability in an amount equal to the total of all contributions made and certified as eligible for credit”. This provision also does not contain the constraint “from or for an operation”.

Conclusion: All of this leaves the Department of Revenue and the taxpayer with some ambiguity as to the amounts that can be claimed as credit and the liabilities against which they can be claimed. Severance liability information is reported in aggregate by taxpayers, many of which cover multiple counties and “operations”. The credit statute implicitly requires that a new

calculation be made of severance liability for the separate “operation” for which the contribution was made and the credit agreement was established.

Solution:

To encourage the taxpayers to make contributions for risky projects, make the entity for which the severance is being calculated the whole taxpayer. Credits created from one operation should be allowed against increased severance tax liability of the taxpayer from any operation that incurs severance tax liability. The “new or expanded operation” would still be specified in the contribution credit agreement for use by the Department of Local Affairs in evaluation of the appropriateness of the proposed credit, and in the estimates by the taxpayer of the 10 years of severance liability. But this definition of “operation” would have no effect on the actual credit claimed. The objective is simplicity and convenience for the taxpayer.

PROPOSED STATUTORY CHANGE #8:

Remove the risk to the Department of Natural Resources in exercising the tax credit.

Discussion:

1. Under the current statute the claim of a credit by a severance taxpayer reduces the revenue received by both the Local Fund side and the Trust Fund side of the severance tax distribution.
2. Following use of the credit, that taxpayer’s further severance tax payments are diverted to the Trust fund to make up for the losses to the Trust Fund so that, in the end, the Local Fund bears the full reduction from the use of the credit. This process requires an extra accounting process for the Department of Revenue and a potential risk to the Trust Fund that the future severance tax payments might not cover the prior losses.

Solution

Allow the exercise of the credit only against the Local Fund share of severance tax revenues. This has the effect of limiting the exercise of the credit to half of the net severance tax liability of the taxpayer in any payment made to the Department of Revenue.

- Increase clarity for industry calculation
- Remove the risk to DNR
- Adapt to any change in local share of severance tax.

In its distributions to the state fund, the Department of Revenue would reduce the share to the Local Government Severance Tax Fund by the amount of the credit claimed, and leave the Trust Fund share whole. Repeal the refunding provision in 39-29-108(3).

Section II: Suggested Edits

PROPOSED STATUTORY EDIT #1 WORDING:

Specify New and Increased Amounts and Timing

Broad Approach:

39-29-107.5 Credit allowed for prior payment of impact assistance.

(1)(a) There shall be allowed, as a credit against any taxes imposed by this article on the severance of minerals or mineral fuels from or for a new operation from or for which first severance occurs subsequent to June 30, 1979, an amount equal to the value of approved contributions by the taxpayer made prior to first severance of such minerals or mineral fuels to assist in solving the impact problems of units of local government resulting from the initiation of such new operation.

(1)(b) There shall be allowed, as a credit against any **INCREASED AMOUNT OF** taxes imposed by this article on the severance of minerals or mineral fuels ~~from or for an operation which has an increase in production from or for which increased severance occurs subsequent to June 30, 1980,~~ an amount equal to the value of approved contributions by the taxpayer made **PRIOR TO THE INCREASED SEVERANCE AMOUNT** to assist in solving the impact problems of units of local government ~~or local units of government locally impacted by the increase in production of an operation.~~ **SEVERANCE.** (1)(c) There shall be allowed, **SUCH CONTRIBUTIONS SHALL BE MADE** pursuant to an agreement between or on behalf of the taxpayer and the unit of local government specified in **SUBPARAGRAPH (A)** subparagraph (I) of paragraph (a) of subsection (23) of this section. ~~as a credit against any taxes imposed by this article on the severance of minerals or mineral fuels,~~

[NEW paragraph break](2)(a)(III) In no event shall the total amount of approved contributions by a taxpayer exceed fifty percent of the **INCREASED** severance tax liability **FROM TAXABLE MINERAL SEVERANCE ABOVE THE AVERAGE SEVERANCE TAX LIABILITY IN THE PRIOR FIVE YEARS** which the taxpayer anticipates will be incurred during the first ten years of severance from ~~an~~ **new operation or fifty percent of the increased severance tax liability which the taxpayer anticipates will be incurred during the first ten years of severance from an** expanded ~~existing~~ operation plus the amounts calculated pursuant to paragraph (c) of subsection (1) of this section.

PROPOSED STATUTORY EDIT #2 WORDING:

Repeal definition of Local government Locally Impacted.

39-29-102(4.5) **REPEALED** Definitions: "Local units of government locally impacted" means units of government in the geographic area wherein reside employees of the operation producing the minerals and mineral fuels taxed pursuant to this article. The geographic area shall be determined on the basis of residence as reported in accordance with section 39-29-110 (1) (d).

PROPOSED STATUTORY EDIT #3 WORDING:

Make the Department of Revenue a Formal Party to Review

“(2)(a)(II) Each contribution must be acted upon for credit and, if approved, a certificate of eligibility issued, within ninety days after joint submission by the taxpayer and the unit of local government, or local unit of government locally impacted, by the executive director of the department of local affairs upon the recommendation of the energy impact assistance advisory

committee created by section 34-63-102 (5) (b) C.R.S., **AND THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE**, and failure to act upon the eligibility within said ninety days shall be deemed as approval and certification of the contribution; and”

PROPOSED STATUTORY EDIT #4 WORDING:

Post contribution evaluation and verification

[NEW Section] 39-29-107.5(5) UPON SUBMISSION OF A CLAIM FOR CREDIT AGAINST SEVERANCE TAX LIABILITY BY A TAXPAYER THE DEPARTMENT OF REVENUE WILL:

(a) EVALUATE THE HISTORY OF SEVERANCE TAX PAYMENTS BY THE TAXPAYER AND DETERMINE THE ACTUAL PORTION OF THE NET SEVERANCE TAX LIABILITY THAT IS AN INCREASE OVER THE BASIS AS DEFINED IN THE TAXPAYER’S ESTIMATES MADE UNDER SECTION (2)(a)(III),

(b) CONFER WITH THE LOCAL GOVERNMENT PARTY TO THE CREDIT AGREEMENT TO VERIFY THAT THE CONTRIBUTIONS HAVE BEEN PROPERLY CONDUCTED AND THE VALUE RECEIVED EQUALS OR EXCEEDS THE CREDIT CLAIMED, AND,

(c) REPORT TO THE DEPARTMENT OF LOCAL AFFAIRS ON THIS EXERCISE OF A CREDIT IN A FASHION WHICH DOES NOT DISCLOSE CONFIDENTIAL TAXPAYER INFORMATION.

PROPOSED STATUTORY EDIT #5 WORDING:

Repeal added definition of minerals.

39-29-107.5(4) (REPEALED) **For purposes of this section, minerals or mineral fuels shall include, but not be limited to, oil shale, crude oil, natural gas, and oil and gas.**

PROPOSED STATUTORY EDIT #6 WORDING:

Organize requirements for the credit agreements.

Wording changes throughout the statute.

PROPOSED STATUTORY EDIT #7 WORDING:

Define or repeal “operation”

Wording changes throughout the statute

PROPOSED STATUTORY EDIT #8 WORDING:

Allow exercise of the credit only against the Local Fund share, and integrate this with the “INCREASED AMOUNT” edit #1

39-29-107.5(1) **(1)(b)-(a) There shall be allowed, as a credit against any INCREASED AMOUNT OF THAT PORTION DISTRIBUTED TO THE LOCAL GOVERNMENT SEVERANCE TAX FUND BY 39-29-108(2) C.R.S. OF taxes imposed by this article on the**

severance of minerals or mineral fuels ~~from or for an operation which has an increase in production from or for which increased severance occurs subsequent to June 30, 1980,~~ an amount equal to the value of approved contributions by the taxpayer made **PRIOR TO THE INCREASED SEVERANCE AMOUNT** to assist in solving the impact problems of units of local government ~~or local units of government locally impacted by the increase in production of an operation.~~ **SEVERANCE. (1)(c) There shall be allowed, SUCH CONTRIBUTIONS SHALL BE MADE** pursuant to an agreement between or on behalf of the taxpayer and the unit of local government specified in **SUBPARAGRAPH (A)** subparagraph (I) of paragraph (a) of subsection ~~(23)~~ of this section. ~~as a credit against any taxes imposed by this article on the severance of minerals or mineral fuels,~~

(1)(c) There shall be allowed, pursuant to an agreement between or on behalf of the taxpayer and the unit of local government specified in subparagraph (I) of paragraph (a) of subsection (2) of this section as a credit against ~~any~~ **THAT PORTION DISTRIBUTED TO THE LOCAL GOVERNMENT SEVERANCE TAX FUND BY 39-29-108(2) C.R.S. OF** taxes imposed by this article on the severance of minerals or mineral fuels, in addition to any amounts determined under paragraphs (a) and (b) of this subsection (1) and subsection (2) of this section, an amount equal to three-fourths of one percent per month times the amount of approved contributions by a taxpayer for each month that any approved contribution precedes the month in which said approved contribution is credited against a taxpayer's yearly severance tax liability. Any amounts of approved contributions credited against a taxpayer's yearly severance tax liability shall be applied to reduce the amount, if any, of approved contributions not previously credited, and the additional percentage provided in this paragraph (c) shall apply solely to said reduced amount of approved contributions.

[NEW paragraph break](2)(a)(III) In no event shall the total amount of approved contributions by a taxpayer exceed ~~fifty percent of the~~ **INCREASED PORTION DISTRIBUTED TO THE LOCAL GOVERNMENT SEVERANCE TAX FUND BY 39-29-108(2) C.R.S. OF** severance tax liability **FROM TAXABLE MINERAL SEVERANCE ABOVE THE AVERAGE SUCH SEVERANCE TAX LIABILITY IN THE PRIOR FIVE YEARS** which the taxpayer anticipates will be incurred during the ~~first~~ ten years of severance ~~from a new operation or fifty percent of the increased severance tax liability which the taxpayer anticipates will be incurred during the first ten years of severance from an expanded existing operation~~ plus the amounts calculated pursuant to paragraph (c) of subsection (1) of this section.

Section III: Combined Statute Edits as Proposed Bill

Edit #2

39-29-102(4.5) REPEALED Definitions: "Local units of government locally impacted" means units of government in the geographic area wherein reside employees of the operation producing the minerals and mineral fuels taxed pursuant to this article. The geographic area shall be determined on the basis of residence as reported in accordance with section 39-29-110 (1) (d).

Edit #1

39-29-107.5 Credit allowed for prior payment of impact assistance.

(1)(a) There shall be allowed, as a credit against any taxes imposed by this article on the severance of minerals or mineral fuels from or for a new operation from or for which first severance occurs subsequent to June 30, 1979, an amount equal to the value of approved contributions by the taxpayer made prior to first severance of such minerals or mineral fuels to assist in solving the impact problems of units of local government resulting from the initiation of such new operation.

(1)(b) There shall be allowed, as a credit against any **INCREASED AMOUNT OF THAT PORTION DISTRIBUTED TO THE LOCAL GOVERNMENT SEVERANCE TAX FUND BY 39-29-108(2) C.R.S. OF** taxes imposed by this article on the severance of minerals or mineral fuels from or for an operation which has an increase in production from or for which increased severance occurs subsequent to June 30, 1980, an amount equal to the value of approved contributions by the taxpayer made **PRIOR TO THE INCREASED SEVERANCE** to assist in solving the impact problems of units of local government or local units of government locally impacted by the increase in production of an operation. **SEVERANCE.** (1)(c) There shall be allowed, **SUCH CONTRIBUTIONS SHALL BE MADE** pursuant to an agreement between the taxpayer and the unit of local government specified in **SUBPARAGRAPH (A)** subparagraph (I) of paragraph (a) of subsection (2) of this section. **as a credit against any taxes imposed by this article on the severance of minerals or mineral fuels,**

(1)(c) There shall be allowed, pursuant to an agreement between or on behalf of the taxpayer and the unit of local government specified in subparagraph (I) of paragraph (a) of subsection (2) of this section as a credit against **any THAT PORTION DISTRIBUTED TO THE LOCAL GOVERNMENT SEVERANCE TAX FUND BY 39-29-108(2) C.R.S. OF** taxes imposed by this article on the severance of minerals or mineral fuels, in addition to any amounts determined under paragraphs (a) and (b) of this subsection (1) and subsection (2) of this section, an amount equal to three-fourths of one percent per month times the amount of approved contributions by a taxpayer for each month that any approved contribution precedes the month in which said approved contribution is credited against a taxpayer's yearly severance tax liability. Any amounts of approved contributions credited against a taxpayer's yearly severance tax liability shall be applied to reduce the amount, if any, of approved contributions not previously credited, and the additional percentage provided in this paragraph (c) shall apply solely to said reduced amount of approved contributions.

(2)(a) Approved contributions, for the purpose of such credits, shall include the contribution of property or payment of money to units of local government or local units of government locally impacted, for use in planning, including financial, architectural, and engineering services, construction, or expansion of public facilities, including but not limited to county or municipal roads, schools, recreation facilities, water facilities, sewage facilities, police and fire protection facilities, and hospitals, which are deemed to be necessitated by the initiation of a new operation or increase in production of an existing operation.

[Relocated paragraph (1)(c)] (2)(a)(I) In addition, subject to the agreement reached pursuant to paragraph (c) of subsection (1) of this section, approved contributions may also include any loss sustained by reason of the sale of any bonds by the taxpayer who purchased such

bonds, the proceeds of which bonds are used in the planning, construction, or expansion of any such public facilities by a unit of local government or local unit of government locally impacted, and any loss by reason of the default on loans made by a taxpayer or satisfaction of a guaranty obligation of the taxpayer arising out of the issuance of such bonds, whether or not such bonds are purchased by the taxpayer. Such losses shall be approved contributions as of the date of the making of a loan, the date of issuance of the bonds, or the date of entering into the guaranty obligation; except that, for purposes of the additional credit allowed pursuant to paragraph (c) of subsection (1) of this section, the date of the approved contribution shall be the date of default on any such loan, the date of loss on any such bond, or the date of satisfaction of any such guaranty obligation.

[New paragraph break] (2)(a)(II) There shall be allowed, pursuant to an agreement between the taxpayer and the unit of local government specified in subparagraph (I) of paragraph (a) of subsection (2) of this section as a credit against **THAT PORTION DISTRIBUTED TO THE LOCAL GOVERNMENT SEVERANCE TAX FUND BY 39-29-108(2) C.R.S. OF** taxes imposed by this article on the severance of minerals or mineral fuels, in addition, subject to the agreement reached pursuant to paragraph (c) of subsection (1) of this section, approved contributions may also include any loss sustained by reason of the sale of any bonds by the taxpayer who purchased such bonds, the proceeds of which bonds are used in the planning, construction, or expansion of any such public facilities by a unit of local government or local unit of government locally impacted, and any loss by reason of the default on loans made by a taxpayer or satisfaction of a guaranty obligation of the taxpayer arising out of the issuance of such bonds, whether or not such bonds are purchased by the taxpayer. Such losses shall be approved contributions as of the date of the making of a loan, the date of issuance of the bonds, or the date of entering into the guaranty obligation; except that, for purposes of the additional credit allowed pursuant to paragraph (c) of subsection (1) of this section, the date of the approved contribution shall be the date of default on any such loan, the date of loss on any such bond, or the date of satisfaction of any such guaranty obligation.

[NEW paragraph break](2)(a)(III) In no event shall the total amount of approved contributions by a taxpayer exceed fifty percent of the **INCREASED PORTION DISTRIBUTED TO THE LOCAL GOVERNMENT SEVERANCE TAX FUND BY 39-29-108(2) C.R.S OF** severance tax liability **FROM TAXABLE MINERAL SEVERANCE ABOVE THE AVERAGE SEVERANCE TAX LIABILITY IN THE PRIOR FIVE YEARS** which the taxpayer anticipates will be incurred during the **first** ten years of severance **FOLLOWING SUCH CONTRIBUTIONS** ~~from an new operation or fifty percent of the increased severance tax liability which the taxpayer anticipates will be incurred during the first ten years of severance from an expanded existing operation~~ plus the amounts calculated pursuant to paragraph (c) of subsection (1) of this section.

[NEW paragraph break] (3)(a)(I) In order for an approved contribution to qualify for credit, the following requirements shall be fulfilled:

[New paragraph numbering] (3)(a)(II)(A) Each contribution shall be based on an agreement between ~~or on behalf of~~ the taxpayer and a unit of local government or local unit of government locally impacted, specifying the need for such contribution and its nature, value or amount, and purpose **AND A STATEMENT OF THE TAXPAYERS ESTIMATE REQUIRED BY SECTION (2)(a)(III);**

(3)(a)(II)(B) Each contribution must be acted upon for credit and, if approved, a certificate of eligibility issued, within ninety days after joint submission by the taxpayer and the unit of local government, or local unit of government locally impacted, by the executive director of the department of local affairs upon the recommendation of the energy impact assistance advisory committee created by section 34-63-102 (5) (b), C.R.S., **AND THE EXECUTIVE**

Edit #3

DIRECTOR OF THE DEPARTMENT OF REVENUE, and failure to act upon the eligibility within said ninety days shall be deemed as approval and certification of the contribution; and

(3)(a)(II)(C) Certification of eligibility for credit of a contribution of a specified value or amount must be transmitted by the executive director of the department of local affairs to the executive director of the department of revenue, the unit of local government or local unit of government locally impacted, and the taxpayer.

[RENUMBER section (3)] (3)(4) A taxpayer shall be entitled to credit against its severance tax liability in an amount equal to the total of all contributions made and certified as eligible for credit plus the amounts calculated pursuant to paragraph (c) of subsection (1) of this section. The taxpayer may claim such credit by submitting with the annual declarations and returns required by section 39-29-112 the certifications of eligibility for such credit or evidence regarding deemed certification, and in the case of losses sustained by reason of the sale of any bonds purchased by the taxpayer, by reason of satisfaction of a guaranty obligation of the taxpayer arising out of the issuance of bonds, or by reason of loans made by the taxpayer, evidence of such losses. The amount of credit available in any one taxable year, including carry-overs, shall not exceed the taxpayer's severance tax liability in such year. Any excess shall be carried over and shall be available as a credit in the next succeeding year or years subject to the same annual limitation.

Edit #5 39-29-107.5(4) REPEALED

Edit #4 **[NEW Section] 39-29-107.5(5) UPON SUBMISSION OF A CLAIM FOR CREDIT AGAINST SEVERANCE TAX LIABILITY BY A TAXPAYER THE DEPARTMENT OF REVENUE WILL:**

(a) EVALUATE THE HISTORY OF SEVERANCE TAX PAYMENTS BY THE TAXPAYER AND DETERMINE THE ACTUAL PORTION OF THE NET SEVERANCE TAX LIABILITY THAT IS AN INCREASE OVER THE BASIS AS DEFINED IN THE TAXPAYER'S ESTIMATES MADE UNDER SECTION (2)(a)(III),

(b) CONFER WITH THE LOCAL GOVERNMENT PARTY TO THE CREDIT AGREEMENT TO VERIFY THAT THE CONTRIBUTIONS HAVE BEEN PROPERLY CONDUCTED, AND,

(c) REPORT TO THE DEPARTMENT OF LOCAL AFFAIRS ON THIS EXERCISE OF A CREDIT IN A FASHION WHICH DOES NOT DISCLOSE CONFIDENTIAL TAXPAYER INFORMATION.

Edit #8 **39-29-108. (3) REPEALED** Effective July 1, 1981, the total gross receipts from any taxpayer who has previously claimed the full amount of the credit for an approved contribution under section 39-29-107.5 shall be allocated solely to the state severance tax trust fund until such time as there is allocated to such fund, in addition to any current allocation to such fund, an amount equal to what would have been allocated to such fund during the time the taxpayer claimed such credit.

Proposed Expansion of the Severance Loan Authority

Background: The Colorado severance tax statute provides for loans as well as grants for local government projects.

The loan statute, C.R.S. 39-29-110(1)(b)(II), currently restricts this option to “domestic wastewater treatment works or potable water treatment facility”. A minimum interest rate is set at 5%.

Since the loan capability was added to the statute in 1984 the Department of Local Affairs has made 318 loans totaling \$31 million. Half have been for 20 years, the rest for shorter terms. These loans have gone for small community systems in rural areas of the state. No loan has gone into default.

Financing tool policy: In combination with the severance tax credit and grants programs, the loan program is a significant opportunity to create local government financing packages that place risks and costs appropriately.

-The loan program provides for funds to be returned to the Local Government Severance Tax Fund for further projects.

-When the boom in mineral revenues has past, these loan repayments become a major source of funds for the local government financing program.

-In the long run, when the minerals have been extracted, the Local Government Severance Tax Fund will likely be only a revolving loan program.

Proposal: To promote the use of the loans for local government facilities projects, we propose that the loan authority be expanded beyond the sewer and water types. There are a host of other types of facilities needed, for example, school, transportation and medical facilities.

In light of the need to have a return flow of funds for future projects, such an expansion of the types of loan projects will make all parties more willing and practiced at using the loan capability to provide for future projects.

PROPOSED STATUTORY CHANGE:

39-29-110(1)(b)(II)(A): In addition to the distribution of moneys authorized under subparagraph (I) of this paragraph (b), the executive director may distribute moneys or make loans, or any combination thereof, to such political subdivisions for the planning, design, construction, erection, building, acquisition, alteration, modernization, reconstruction, improvement, or expansion of **domestic wastewater treatment works or potable water treatment** PUBLIC facilities. Any loan made by the executive director under the authority of this section shall only be made under such terms as will insure repayment of the loan with interest assessed and collected at an interest rate of not less than five percent.

(B) As used in this subparagraph (II), **"domestic wastewater treatment works" means a system or facility of a political subdivision for treating, neutralizing, stabilizing, collecting, or disposing of domestic**

wastewater, which system or facility has a designed capacity to receive more than two thousand gallons of domestic wastewater per day, and "domestic wastewater treatment works" includes appurtenances to such system or facility, such as outfall sewers, pumping stations, and collection and interceptor lines, and the equipment related to such appurtenances.

(C) As used in this subparagraph (II), "potable water treatment facilities" means a system or facility of a political subdivision for treating water to be supplied to the public for domestic use, and "potable water treatment facilities" includes water treatment plants, treated water storage facilities, water mains, water distribution lines, pumps, and appurtenances.
